

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
LEHIGH VALLEY MOBILE TELEPHONE)	File No. 59659-CM-AL-91
COMPANY)	
)	
For Reinstatement, Renewal, and Assignment of)	
Multichannel Multipoint Distribution Service)	
(MMDS) Station WHT753, Atlantic City, New)	
Jersey)	
)	
WYSE WIRELESS PARTNERSHIP)	File No. 53037-CM-P-90
)	
For Authority to Constrict and Operate an MMDS)	
Station on the E Group Channels at Emporia,)	
Kansas)	
)	
GUADALUPE VALLEY ELECTRIC)	File No. 51310-CM-P-90
COOPERATIVE)	
)	
For Authority to Construct and Operate an MMDS)	
Station on the E Group Channels at Shiner, Texas)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: October 21, 2003

Released: October 23, 2003

By the Commission:

1. *Introduction.* We have before us three separate applications for review (AFRs) filed by three different applicants in the Multichannel Multipoint Distribution Service (MMDS). On March 20, 1992,¹ Lehigh Valley Mobile Telephone Company (Lehigh Valley) sought review of the February 20, 1992 action taken by the Domestic Facilities Division (DFD), former Common Carrier Bureau² dismissing its late-filed application to renew MMDS Station WHT753, Atlantic City, New Jersey,³ denying its late-filed petition for reinstatement of that license,⁴ and dismissing its application to assign Station WHT753 to Orion Broadcasting Systems, Inc. (Orion).⁵ On July 8, 1996,⁶ WYSE Wireless

¹ Lehigh Valley Mobile Telephone Company, Application for Review (filed Mar. 20, 1992) (Lehigh Valley AFR).

² See Letter from James A. Keegan, Chief, Domestic Facilities Division, Common Carrier Bureau, FCC, to Mr. Richard C. Dean, Lehigh Valley Mobile Telephone Company (dated Feb. 20, 1992) (Lehigh Valley Dismissal Letter).

³ See FCC File No. BRMD-92-52256 (filed Nov. 8, 1991) (Lehigh Valley application).

⁴ See Lehigh Valley Mobile Telephone Company, Petition for Reinstatement (filed Dec. 12, 1991) (Lehigh Valley reinstatement petition).

Partnership (WWP) sought review of a decision released by the Video Services Division (Division) of the former Mass Media Bureau⁷ on June 6, 1996 affirming the dismissal of WWP's application to construct and operate an MMDS station in Emporia, Kansas.⁸ On July 25, 1996, Guadalupe Valley Electric Cooperative (GVEC) and United States Wireless Cable (USWC) filed an application for review⁹ of the Division's June 25, 1996¹⁰ affirmance of the return of GVEC's application for authority to construct and operate an MMDS station on the E group channels in Shiner, Texas.¹¹ For the reasons discussed below, we dismiss the AFRs with prejudice.

2. *Background.* On October 18, 2002, the Wireless Telecommunications Bureau released a Public Notice¹² (*October Public Notice*) in which it sought to ensure that it had a complete and accurate listing of all pending legal matters in the ITFS, the MDS, and the MMDS. An appendix containing a list of all of the pending ITFS, MDS, and MMDS cases was attached to the *October Public Notice*.¹³ The *October Appendix* indicated the name of the applicant/licensee, the file number/call sign, the pleading type and filing date, the name of the petitioner, if not the applicant, and whether the file was complete.¹⁴ All ITFS, MDS, and MMDS licensees, applicants, and other parties with pending pleadings relating to these services were required to review and verify the information contained in the *October Appendix*. For legal matters with a filing date before March 25, 2002, licensees, applicants, and other parties with pending pleadings were required to respond in writing by December 17, 2002 if they desired continued processing of these matters.

3. *Discussion.* The subject AFRs were listed in the *October Appendix*.¹⁵ Lehigh Valley, WWP, and GVEC failed to file a written response in accordance with the *October Public Notice*. On August 8, 2003, Lehigh Valley, WWP, and GVEC were provided with a final opportunity to respond to

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⁵ See FCC File No. File No. 59659-CM-AL-91 (filed May 2, 1991) (Lehigh Valley assignment application).

⁶ Wyse Wireless Partnership, Application for Review (filed July 8, 1996) (WWP AFR).

⁷ Effective March 25, 2002, the Commission transferred regulatory functions for the Instructional Television Fixed Service and the Multipoint Distribution Service/Multichannel Multipoint Distribution Service from the Mass Media Bureau to the Wireless Telecommunications Bureau (Bureau). See Radio Services Are Transferred From Mass-Media Bureau to Wireless Telecommunications Bureau, *Public Notice*, 17 FCC Rcd 5077 (2002). Accordingly, the Bureau's Public Safety and Private Wireless Division assumed all regulatory duties associated with these services effective March 25, 2002. *Id.*

⁸ See FCC File No. 53037-CM-P-90 (filed July 2, 1990) (WWP application).

⁹ Guadalupe Valley Electric Cooperative and United States Wireless Cable, Application for Review (July 25, 1996) (GVEC AFR).

¹⁰ Guadalupe Valley Electric Cooperative, *Order on Reconsideration*, 11 FCC Rcd 7434 (MMB VSD 1996) (affirming the February 9, 1993 return of the subject application and denying the March 11, 1993 petition for reconsideration of that return) (*GVEC Order on Reconsideration*).

¹¹ FCC File No. 51310-CM-P-90 (filed May 3, 1990). The AFR refers to Shiner, Texas as Gonzales, Texas.

¹² Wireless Telecommunications Bureau Seeks to Verify ITFS, MDS, and MMDS Pending Legal Matters, *Public Notice*, DA 02-2752, 67 Fed. Reg. 69529 (2002) (*October Public Notice*).

¹³ *Id.*, Appendix (*October Appendix*).

¹⁴ *Id.*

¹⁵ See *id.*, lines 144, 200, 327.

the *October Public Notice*.¹⁶ The letters gave Lehigh Valley, WWP, and GVEC ten days to submit a letter indicating their continued interest in prosecuting their AFRs.¹⁷ The letters explicitly stated that if the parties did not respond, their AFRs would be dismissed.¹⁸ No party expressed its continued interest in prosecuting its AFR before the Commission. Therefore, we dismiss the AFRs filed by Lehigh Valley, WWP, and GVEC with prejudice.

4. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Sections 1.115 and 21.28(b) of the Commission's Rules, 47 C.F.R. §§ 1.115, 21.28(b), the Applications for Review filed by Lehigh Valley Mobile Telephone Company on March 20, 1992, WYSE Wireless Partnership on July 8, 1996, and Guadalupe Valley Electric Cooperative and United States Wireless Cable on July 25, 1996 ARE DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁶ See Letter from John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC, to Guadalupe Valley Electric Cooperative, Inc. (Aug. 8, 2003); Letter from John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC, to Lehigh Valley Mobile Telephone Company (Aug. 8, 2003); Letter from John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC, to WYSE Wireless Partnership (Aug. 8, 2003) (collectively, Letters). The Letters were also sent to counsel of record for Lehigh Valley, WWP, and GVEC.

¹⁷ See Letters at 1-2.

¹⁸ See *id.* at 2.